



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0069]

Commercial Driver's License: United Parcel Service, Inc. (UPS); Application for Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA announces its decision to grant United Parcel Service, Inc.'s (UPS) application for an exemption from certain provisions of the Agency's commercial driver's license (CDL) regulations. The exemption allows UPS to conduct behind-the-wheel training for commercial learner's permit (CLP) holders in twin 28-foot trailers, rather than waiting to conduct the training after the individuals receive their Class A CDLs and pass the required knowledge test to obtain the double/triple trailer endorsement on their CDLs. FMCSA has analyzed the exemption application and the public comments and has determined that the exemptions, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4225; E-mail: MCPSD@dot.gov. If you have

questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert the docket number, “FMCSA-2020-0069” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m. (ET), Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

I. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application

and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

When the Agency denies a request for an exemption, the applicant may be allowed to resubmit the application if the applicant can reasonably address the basis for denial. 49 U.S.C. 31315(b)(3).

II. Current Regulations

FMCSA's CDL regulations prohibit employers from allowing an individual to operate a CMV during any period in which the driver does not have a CLP or CDL with the proper class or endorsements (49 CFR 383.37(a)), and the regulations prohibit the State driver licensing agencies (SDLAs) from issuing a double/triple trailer endorsement to CLP holders (49 CFR 383.25(a)(5)(iv) and 383.93(a)(2)). The regulations do not specify a minimum amount of time an individual must hold a Class A CDL prior to seeking the double/triple endorsement and do not require training or passing a double/triple trailer skills test prior to receiving the double/triple trailer endorsement. Individuals seeking such an endorsement need only pass a knowledge test.

III. Applicant's Request

UPS requests exemptions from 49 CFR 383.37(a) and 49 CFR 383.93(b)(1) to permit its CDL instructors to conduct behind-the-wheel training of CLP holders using twin 28-foot trailers. UPS uses single and double trailers in its fleet and requires that all its Class A CDL drivers be qualified to operate twin 28-foot trailers. UPS wants to ensure that its driver-trainees know how to safely operate the vehicles they will be driving in normal operations and plans to train its Class A CLP holders to operate double trailers prior to the individuals receiving their CDLs and taking the double/triple trailer knowledge test.

Because of the regulations cited above, UPS states that it is unable to include on-the-road doubles training in its initial driver training because double/triple trailer endorsements are not allowed on CLPs. Instead, a driver must receive a CDL before the driver can obtain a double/triple trailer endorsement. After the driver obtains the endorsement, the employer may conduct training on public roads.

UPS explained that it has a “hire from within” culture. Typically, its long-haul driver candidates come from the ranks of UPS associates who are experienced drivers of CMVs that do not require a CDL. Once a candidate obtains a CLP, UPS provides 80 hours of combined classroom and behind-the-wheel skills instruction training. UPS noted that a driver must wait 14 days after receiving a CLP before he or she can take the skills test required to obtain a CDL (49 CFR 383.25(e)). Depending on the State, it may take longer to secure an appointment for the CDL skills test. Therefore, weeks could pass between the time the driver receives primary training and the time the driver can obtain on-the-road training in doubles.

UPS notes that the regulations allow any Class A CDL holder to take the double/triple trailer endorsement knowledge test and obtain the endorsement without completing specialized training or passing a skills test. By contrast, under the requested exemptions, the UPS driver-trainee with a CLP would be permitted to operate doubles only under direct supervision of an experienced instructor and be required to successfully complete the training prior to obtaining the Class A CDL and applying for the double/triple trailer endorsement.

After the close of the comment period to UPS’s application for exemptions, UPS submitted additional materials to FMCSA detailing UPS’s training program. UPS identified the additional materials as Confidential Business Information (CBI). Because the information is CBI, there is no way for the public to comment on it. For this reason, the additional materials were not placed in the docket for this notice.

IV. Method to Ensure an Equivalent or Greater Level of Safety

According to UPS, the requested exemption would achieve a level of safety equivalent to, or greater than, that which would be obtained by complying with current regulations and cites the following measures in support of this conclusion:

- Each driver with a CLP will receive a minimum of 80 hours of training;
- Drivers must successfully pass a UPS knowledge test similar to one that would be administered by the SDLA before beginning on-road skills training in doubles;
- Doubles skills training for drivers with CLPs will start in a closed yard;
- During all phases of behind-the-wheel training (BTW) (i.e., road and range), driver-trainees will have direct supervision from a certified instructor who has completed an 8-week UPS Driver Trainer and Instructor Program and is recertified every 90 days; and
- UPS will maintain a “satisfactory” safety rating with FMCSA.

Upon completion of the formal training, UPS asserts that the driver-trainees continue to improve their skills by operating UPS vehicles under the close supervision of certified instructors until they are ready to obtain their CDL. UPS believes these controls should address any safety concerns FMCSA or the motoring public might have regarding the requested exemptions. A copy of UPS’s application for exemptions is available for review in the docket for this notice.

V. Public Comments

On February 25, 2020, FMCSA published notice of UPS’s application for exemptions and requested public comment (85 FR 10810). The Agency received 38 comments. Twenty respondents supported the exemptions. Ms. Carolyn Carter said, for example, that “[a]llowing UPS to train with doubles during the initial training period gives the new drivers more experience and training prior to getting on the road by

themselves. Providing UPS receives this exemption, it allows for safer new drivers to be prepared for the conditions of the roadways while hauling sets.” An anonymous commenter stated that, “All of the trainers at UPS go through extensive training in order to drive and operate doubles (Tractor and two 28' trailers) and are very experienced when it comes to training new drivers how to operate such equipment. It would be very beneficial to the new drivers to be able to get behind the wheel experience with doubles while they are going through training with their CLP.”

Eighteen individuals opposed the exemption. Commenters who opposed the exemption stated that new drivers do not have sufficient experience to operate double trailers and that those drivers would not operate safely. Mr. Michael Millard wrote: “Based on the verbiage of UPS' application that did not request an exception from [§ 380.203] that requires a driver to possess a CDL for six months or [§ 383.25] which prohibits CLP holders from obtaining a double/triple trailer endorsement and the safety issues associated with double/triple trailers. I strongly suggest UPS's application be denied.” Another individual, MJ Thorne, said, “Please do not give UPS this exemption! New drivers need experience before they start handling things like doubles. If UPS is experiencing a hardship because they are training drivers but can't have them pull doubles, then they should not be training people new to this industry.”

VI. FMCSA Response and Decision

The premise of some comments opposing the exemptions is that CLP holders lack experience driving a single trailer and should not be able to operate double/triple trailers until they receive their CDL. The CDL regulations, however, do not specify a minimum amount of time an individual must hold a Class A CDL prior to seeking the double/triple trailer endorsement and do not require training or passing a double/triple trailer skills test prior to receiving the double/triple trailer endorsement. Individuals with a valid Class A CDL seeking such an endorsement need only pass a knowledge test. The measures

proposed by UPS would ensure that drivers receive on-road skills training prior to receiving the double/triple trailer endorsement.

In response to the comment stating that UPS did not seek an exemption from 49 CFR 380.23, FMCSA notes that section 380.23 applies only to operators of longer combination vehicles (LCVs), which have a gross vehicle weight greater than 80,000 pounds. The training requirements in 49 CFR part 380, Subpart A, continue to apply to UPS drivers operating LCVs.

FMCSA has evaluated UPS's application and the public comments and decided to grant the exemptions. The Agency believes that UPS's training procedures will likely enable UPS and its drivers to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption is restricted to UPS's driver-trainee CLP holders operating vehicles with a gross vehicle weight of 80,000 pounds or less. The exemption will enable UPS drivers to obtain on-the-road training in doubles only under direct supervision of a certified driver instructor who has completed UPS's 8 week UPS Driver Trainer and Instructor Program and is recertified every 90 days before obtaining a CDL and the required endorsement for operating such CMVs.

Prior to making its decision, the Agency conducted a comprehensive review of UPS's safety performance, which included a review of the Motor Carrier Management Information System safety records, and inspection and accident reports submitted to FMCSA by State agencies. UPS possesses an active USDOT registration, maintains minimum required levels of financial responsibility, is not subject to an "imminent hazard" or other out-of-service (OOS) order, and has a "satisfactory" safety rating with FMCSA. FMCSA has therefore decided to grant the exemptions, subject to the terms and conditions outlined below.

VII. Terms and Conditions of the Exemption

The exemptions from 49 CFR 383.37(a) and 49 CFR 383.93(b)(1) will allow UPS driver-trainee CLP holders who have completed yard skills training and passed a company administered knowledge test in all of the areas required to obtain a double/triple trailer endorsement on a CDL under 49 CFR 383.115 to operate doubles under direct supervision of a certified training instructor who has a CDL with the double/triple trailer endorsement. Driver-trainees covered by these exemptions will not be required to possess a CDL or a double/triple trailer endorsement while performing on-the-road training in doubles. However, drivers will be required to present proof to law enforcement, upon request, that they have completed yard skills training and passed a company-administered knowledge test.

Terms and Conditions of the Exemption

- Each driver covered by the exemption must maintain a valid CLP and not be subject to an OOS order or loss of driving privileges;
- Each driver must meet all of FMCSA's physical qualifications requirements under 49 CFR part 391;
- Each driver with a CLP must receive a minimum of 80 hours of training administered by UPS. The training must include at least 15 hours of classroom instruction, 18 hours of one-on-one field instruction focused on coupling and uncoupling doubles equipment, and 45 hours of individual on-road instruction operating doubles equipment on a public roadway;
- Drivers must successfully achieve a score of at least 80% on a UPS-administered written knowledge test similar in content to that which would be administered by the State pursuant to 49 CFR 383.115, before beginning BTW skills training in doubles;
- Doubles skills training for CLP holders will start in empty vehicles in a closed yard before moving to a public roadway;

- During all BTW training, driver-trainees will be under the direct supervision of a Class A CDL holder with a double/triple endorsement who has been certified as an instructor by UPS through an 8 week training program and is recertified every 90 days and who meets the qualifications in the definition of “BTW instructor” in 49 CFR 380.605;
- UPS will maintain a “satisfactory” safety rating assigned by FMCSA under the procedures in 49 CFR part 385; and
- Each driver must have a copy of this notice in his or her possession while operating under the terms of the exemptions. This notice serves as the exemption document and must be presented to law enforcement officials upon request.

Preemption

During the period these exemptions are in effect; no State may enforce any law or regulation that conflicts with or is inconsistent with the exemptions with respect to a person or entity operating under the exemptions (49 U.S.C. 31315(d)).

FMCSA Accident Notification

UPS must notify FMCSA immediately of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing these exemptions. The notification must be by email to MCPSPD@DOT.GOV, and include the following information:

- a. Exemption Identifier: “UPS”;
- b. Date of the accident;
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;
- d. Driver’s name and driver’s license number;
- e. Co-driver’s name and driver’s license State, number, and class;

- f. Vehicle company number and power unit license plate State and number;
- g. Number of individuals suffering physical injury;
- h. Number of fatalities;
- i. The police-reported cause of the accident;
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the CLP holders covered by the exemptions will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of these exemptions. The FMCSA will immediately revoke these exemptions for failure to comply with the terms and conditions set forth above.

Robin Hutcheson,
Deputy Administrator.

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